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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 900

CONSTANTINE GUINESS, *Petitioner*

v.

THE UNITED STATES, *Respondent*

PETITIONER'S REPLY BRIEF

The United States, in its Brief in opposition, put in issue the question of procedural irregularity. While it is true that petitioner raised only the issue of lack of substantial evidence to support the legal and factual conclusion of the charge of desertion, there are procedural irregularities which were raised at the administrative level.

Among others, the most important was the failure to allow in evidence the official log of the ship, despite petitioner's request that this be done.

The log would have established both the "sailing time" and "departure time" of the ship on the date petitioner was alleged to have deserted.

The court below in its opinion stated [Appendix p. 6 (a)]:

> "* * *, but even after he had 'slept over it,' he still made no effort to rejoin his ship, but abandoned it * * *."

While the ship "sailed" for New York at 10:00 A.M., this term refers to the time the ship departed the harbor limits and *not* the time it pulled away from the dock. Generally, this would be an hour or more earlier. Since petitioner awoke at 9:00 A.M., it would have been physically impossible to return to his ship.

CONCLUSION.

The petition should be granted.

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